

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

TEXAS BANKERS ASSOCIATION, *et al.*,

*Plaintiffs,*

v.

CONSUMER FINANCIAL PROTECTION  
BUREAU, *et al.*,

*Defendants.*

Civil Action No. 7:23-cv-00144

**DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO STAY DEADLINE TO RESPOND TO  
FARM CREDIT INTERVENORS' MOTION FOR JUDGMENT ON THE PLEADINGS**

Farm Credit (FC) Intervenor's opposition (ECF No. 112) inappropriately seeks relief to which they are not entitled. It is axiomatic that a party is not required to answer or otherwise respond to a proposed amended claim before the court has decided whether that claim will be admitted into the case. Fed. R. Civ. P. 12, 15(a)(2)-(3) (response to a putative amended complaint due only after the court has granted leave to amend the complaint and the amended complaint has been served). FC Intervenor's contrary proposal—to have Defendants' forthcoming opposition to FC Intervenor's motion to amend their complaint be “construe[d] . . . as an opposition to the Motion for Judgment on the Pleadings” before the Court has even evaluated whether their motion for leave to amend should be granted—short-circuits the Rules of Civil Procedure, unduly presupposes how Defendants will oppose the motion for leave to amend and how the Court will adjudicate that motion, and prejudices Defendants. FC Intervenor's proposal is particularly inappropriate here, where they filed their request for the

court to “construe” Defendants’ opposition to the motion to amend as an opposition to the motion for judgment on the pleadings one day before that opposition is due to be filed. The Court should reject this unwarranted request, and stay any obligation to respond to FC Intervenor’s untimely motion for judgment on the pleadings.

In the event that the Court grants FC Intervenor’s motion for leave to amend their complaint, it should, accordingly, permit Defendants to respond to the newly amended complaint in intervention in the ordinary course under the Federal Rules. If the Court would prefer that Defendants also respond to FC Intervenor’s motion for judgment on the pleadings before the pleadings are closed, Defendants respectfully suggest they file an opposition to that motion combined with a brief in support of a cross-motion to dismiss. That would leave the Court in a position to either rule for Defendants by dismissing the new claim, or for FC Intervenor by granting the motion for judgment. At a minimum, Defendants request adequate opportunity to respond to any arguments FC Intervenor raise in response to Defendants’ filing/s.<sup>1</sup>

Dated: August 23, 2024

Respectfully submitted,

/s/ Karen S. Bloom

Seth Frotman

*General Counsel*

Steven Y. Bressler

*Deputy General Counsel*

Kevin E. Friedl

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<sup>1</sup> Because movants agree that if the Court does not construe Defendants’ opposition to the motion to amend as an opposition to the motion for judgment on the pleadings (which, as explained above, it should not), Defendants should not be required to respond to the motion for judgment on the pleadings until 14 days after the Court has ruled on FC Intervenor’s motion to amend, *see* ECF No. 112 at 4, Defendants have not filed a separate response to that (premature) motion today.

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CERTIFICATE OF SERVICE

I hereby certify that on August 23, 2024, I electronically filed the foregoing using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Karen S. Bloom